LEGAL AID WORK AND THE ADMINISTRATION OF JUSTICE.*

Any discussion of the relationship between the work of the legal aid organizations and the administration of justice must be based upon a clear definition and a mutual understanding of the nature and function of the two institutions involved.

The essence of legal aid work is providing lawyer's services to the poor either freely or at a nominal charge. In some countries this is done through the courts, in others through the bar; in the United States it is done through the legal aid organizations. A legal aid organization is an agency, supported by public or private funds, which pays the salaries of a staff of lawyers and maintains an office which is exactly like any other law office of the humbler sort except that it has many more clients and sends out no bills. Between those two peculiar attributes there is undoubtedly a close causal connection.

The administration of justice signifies the entire system and plan which in every civilized society the state has created and controls for the purpose of securing justice to its citizens. By stating the component functional parts of our system and by appraising them from the point of view of our particular subject we can, I trust, at once dispel certain misunderstandings which have at times beclouded the existing situation in men's minds and clarify the real issue by focusing attention on those parts of the system which seem to embarrass and handicap the poor when they try to obtain justice.

Our system is based on the concept that justice should be administered by trained judges according to the settled principles of the substantive law. We all know that American substantive law confers its rights and imposes its obligations without respect of persons; that in spirit and in substance it is democratic to the core. No lawyer, I am sure, will dissent from the statement that our judges constitute the most faithful, the most able, the most upright class of public servants in the country. Both the law itself and the judges who enforce

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that law in our several courts are impartial and, so far as their functions extend, afford equal justice to all men.

But laws are not self-enforcing, so that our system necessarily includes definite and prescribed methods for enforcing rights. These we speak of as the rules of pleading, practice, and procedure. And for the actual operation of this necessarily vast and complicated machinery of justice, our system contemplates and the state licenses a definite class of agents called lawyers.

It is not necessary here, as it is in discussing this subject with laymen, to elaborate the point that the lawyer is an integral part of our system of justice. We know that we are agents of the court and ministers of justice. Of the lawyer's function the Supreme Court of the United States in *ex parte* Garland, 4 Wall. 333, 384, has said:

> "It is believed that no civilized nation of modern times has been without a class of men intimately connected with the court, and with the administration of justice, called variously attorneys, counsellors, solicitors, proctors. They are as essential to the workings of the court as the clerks, sheriffs, and marshals, and perhaps as the judges themselves, since no instance is known of a court of law without a bar."

The lawyer prepares the facts, briefs the law, draws the pleadings and conducts the trial; his function is to make the machinery move. To borrow a homely illustration one may liken the administration of justice to an automobile in which the law is the engine, the judge is the steering and controlling apparatus, and the lawyer is the gasoline. We all know that if a car is to be started and kept in motion the motive power of gasoline is essential, and we should say that to give each of two men precisely the same type of car, allow gasoline to one and not to the other, and then expect a fair race, was preposterous.

Yet does not our existing system come perilously near to tolerating an analogous discrepancy within the administration of justice every day? Consider the situation of a woman who in 1914 in the city of Boston borrowed ten dollars from the Star Finance Co. to send to her mother so that she might not

be evicted from her home. For a year the woman paid interest of 180 per cent. In 1916 the Boston Legal Aid Society secured from the legislature a law limiting the interest rate on small loans to 36 per cent per annum. The lender by a device contrary to the statute, continued to extort interest of 156 per cent per annum. It was the law of the commonwealth that if illegal interest were charged a court of equity could declare the loan void. There was the law, the equity court was in session, the judge was on the bench and the court officers were in attendance. All that was of no avail to her. The law could not extend its protection until a bill of complaint had been properly drawn and served, until the facts had been properly proved, and until a decree had been properly drawn. These things required a lawyer's services. But the woman did not have, and because of her condition could not earn, the necessary sum of money to pay even a small fee.

I think it is fair to generalize from this illustration, first because it is an actual case, and second because change all the facts, excepting the one fact of poverty, as much as you will, the result will remain the same. Destitution, which makes it impossible to retain a lawyer, is often due to the wrongful act of another; the substantive law authorizes the courts to give redress for that wrongful act; but to obtain that redress from the courts requires the skilled services of a lawyer. Here indeed is a vicious circle, and within it, as the records of the legal aid organizations testify, have been caught thousands of unpaid laborers, immigrants defrauded of their savings, injured workmen, and deserted wives.

We can see that this unhappy condition exists and why it exists because the instant we examine how our system of doing justice actually works out in the present-day world we find ourselves face to face with this dilemma. Lawyers are essential to the person who needs legal advice or court action; lawyers, like other human beings, must live and therefore must be paid for their services; but in every large city there are thousands of men, women and children who need legal advice or assistance in litigation and yet who are too poor to pay the reasonable fees which lawyers must charge.

This is the great maladjustment in the administration of

justice as it is organized today. It makes access to the courts by the poorer people difficult and often impossible. It gives rise to the problem which we have met here to discuss and to solve to the best of our ability. The task is a challenge to us to make our system of justice approximate as closely as is humanly possible that ideal of freedom and equality of justice which our forefathers contemplated when they provided in our constitutions:

> "Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay, conformably to the laws."

When those words were written in 1780, the founders of our institutions realized perfectly clearly, just as we realize when we stop to think about it, that the effect of the American Revolution was to depose King George III and to set the law in his stead as the sovereign power in the new democracy "to the end," as the classic phrase states it, "that ours shall be a government of laws and not of men."

All rights, even the inalienable rights to life, liberty, and the pursuit of happiness were made to depend in last resort on the protection afforded by law through enforcement in the courts. To make certain that enforcement the state has erected its machinery of justice and this machinery depends for the performance of certain essential functions on agents of the court called lawyers. All this has been done in good faith and in itself is entirely proper. What seems to me improper is that having created this system we have failed to make it possible for all men to obtain the services of those agents. Our failure has been unintentional and unconscious because we have not realized the results which unavoidably flow from such a situation. If men, because of poverty, cannot secure counsel the machinery of justice becomes unworkable, and that in turn means that rights are lost and wrongs go unredressed. When persons are thus debarred from their

day in court they are as effectively stripped of their only protection as if they had been outlawed.

No democracy can tolerate such a condition in its most essential institution nor can it safely incur the dangerous sense of injustice, bitterness and unrest which it inevitably engenders. The nation looks to us, as the official representatives of law, for guidance.

How then can we obviate this difficulty caused by the inability of the poor to employ counsel?

Experience has demonstrated only two methods. The first, which is limited in scope but is extremely effective so far as it goes, consists of simplifying the machinery so much that lawyer's services are unnecessary. In some few fields the lawyer is today required solely because of anticipated and cumbersome procedure. For instance, there is no good reason why a court summons issued in Massachusetts and in some other states should read: "We command you to appear before the Justice of our Court on Saturday, the twenty-eighth day of August, A. D., 1920. Fail not of appearance at your peril" so that it is necessary to employ counsel to explain that the plain English words do not mean what they say but in law mean that you are not required to appear before the judge at all but must file your answer with the clerk on or before the succeeding Wednesday. Mr. Justice Bond of the Supreme Court of Maryland has pointed out that when these words originally appeared in the summons they were true, because in the early days the defendant was required to appear in person and only thereafter could he answer or plead by an attorney. For generations the practice has been changed but the outgrown phraseology has remained. A little modernizing will do away with the artificial need of employing counsel to explain useless anachronisms.

Simplification of machinery has proved eminently successful when applied to small contract cases, such as grocery bills, claims for wages, and miscellaneous debt. The small claims courts, which now exist in seven or eight different cities, have demonstrated that in the average small claim the law and the facts are so simple that technical rules of pleading and pro-

cedure can safely be dispensed with and when that has been done lawyers' services are not necessary. No law prohibits the appearance of counsel before the small claims session of the Cleveland Municipal Court but the fact is that lawyers almost never appear.

The quickest way to explain what this simplified machinery is and how it operates is to tell you the story of a case I heard one morning in the Cleveland small claims court.

A was unable to collect from B his bill for four dollars for pressing the suit of Mrs. B. He went to the clerk of the small claims session, who, finding that the matter could not be directly adjusted over the telephone, had A sign a simple statement which corresponded to copying the bill onto the court docket. On payment of fifty cents, which covered all costs, a summons was made out and deposited by the bailiff in the mail chute. This required B to appear on the third following day and on that day A and B appeared.

Instead of a formal calling of the case, when it was reached the judge merely asked Mr. A. and Mr. B to step to the bench. A few direct questions made it clear that Mr. A had done the work, delivered the suit, and had not been paid. Mr. B was then asked if the work was imperfect and why the bill was unpaid. He responded that when the suit was delivered the man had insulted his wife and had concluded with the flat statement: "I pay no bill to a man who insults my wife." The judge talked that over with Mr. A and it appeared that A did not deliver the suit, but that his boy did and the boy, he admitted, "was inclined to be a little fresh." The judge thereupon suggested that Mr. A go into the anteroom, telephone Mrs. B and apologize for anything that might have been said. This A did at once and on his return a moment later was given judgment for the four dollars. B took the money out of his pocket and paid A. They shook hands. After saying, "Thank you, judge," they departed together in peace.

What a contrast to this simple, direct, quick, inexpensive procedure is our traditional and customary procedure. And how different are the results the two produce. A dramatic critic once made the observation that in most tragedies, if at

the end of the first act the author would permit his characters to have a few frank words with each other, the misunderstanding which was the basis of the plot would vanish and the play would abruptly come to a happy ending.

In all fairness I ask whether the little A versus B episode which was turned into a comedy by the Cleveland small claims court would not be converted into a tragedy by the formal contentious procedure enforced in most courts. In my own state, Massachusetts, A might have forgone his just dues because the costs and fees would be too much and thereafter he would have hated B and the law as well. Or, if B had retained me, I should have pleaded a general denial and payment. That would have started the plot in earnest. Then, either I should have defaulted just before the trial, or I would have attempted a defense of "poor workmanship" and would have brought in all of Mrs. B's neighbors to prove it. A, of necessity, would appear armed with his lawyer and a company of tailors. Thus, where there was no real issue, I should have created one. If, during the trial, anything about a possible insult to Mrs. B were mentioned, both I and my brother for the plaintiff would have been on our feet with objections which would have been sustained. At that point the real solution of the case would have been lost forever and we should have labored on to the bitter end, a perfect living example of an absolute economic waste. Barring some technical mischance, A would get his judgment because our judges are seldom fooled by specious defenses, and a bill of costs would be added on. A and B would be enemies ever after and neither would thank the judge, who to them personifies the law. A would not net his four dollars, he would have lost a customer, and also a day's work. B would have had his fighting blood stirred by the trial, would therefore be angry at his defeat, he would be quite a bit out of pocket, and he would have contempt for a court which compelled him to pay for having his wife insulted.

The small claims court represents what can be accomplished through intelligent readjustment of the *machinery* of justice without in any way departing from those fundamentals which

we consider essential to justice. In the small claims court justice is administered by trained judges according to the principles of the substantive law just as faithfully as in any court in the land. But by adjusting its procedure to the needs of the little cases it has succeeded in obviating the expense of counsel which heretofore has always handicapped the poor.

As many of the cases of the poor are small claims, their position before the law will be vastly improved if we can secure the establishment of small claims session in every municipal court.

Two other experiments have been made along somewhat analogous lines. One is the domestic relations court, with its auxiliary administrative machinery of the probation staff. The other is that new type of legal institution which we call an administrative tribunal. Within a decade we have seen the law governing industrial accidents radically altered and the cases of injured workmen taken out of the courts and entrusted to the industrial accident commissions. We gave them much greater power to control their procedures than we have given the courts, and they have succeeded by standardizing forms, simplifying procedure, and by affording a certain amount of assistance from clerks and inspectors in establishing a form of machinery which operates to bring the vast proportion of cases within their jurisdiction to an almost automatic settlement.

From the point of view of the poor this has been a great step forward. Whereas under the old law and procedure an injured workman was obliged either to accept the amount offered by a casualty company adjuster or employ counsel on a contingent fee basis and wage a protracted and expensive fight in the courts, today, in nine cases out of ten, he receives the exact amount of compensation awarded by law promptly and without expense. Freedom and equality of justice are thereby actually attained.

It was originally intended that the compensation acts would do away with the need for lawyers altogether. That plan has failed as it was bound to fail. When a case gives rise to some disputed question of fact or law the fundamental and

genuine necessity of the lawyer's function instantly appears. The commission cannot perform the inconsistent responsibilities of judge and advocate. This clearly marks the limit beyond which our first solution of obviating the expense of counsel through simplification of machinery is not effective.

Small claims, domestic relations, and industrial accidents are but small sections of the whole vast realm of the law which in all its manifold departments reaches out and regulates individual conduct, business conduct, contractual relations, social relations, property, and countless other subjects too numerous to be mentioned. For the conduct of cases arising in all this area the services of lawyers are essential. By hypothesis, the administration of justice cannot function impartially unless both parties have adequate representation. No easy solution through simplified procedure is sufficient.

The only solution which can overcome the difficulty caused by the inability of the poor to bear the expense of lawyers' services is, therefore, to supply them with lawyers' services gratuitously. In other words, as we cannot eliminate the need for lawyers without overturning the entire structure of our legal institutions the only possible alternative is to eliminate the expense.

The responsibility of supplying the services of lawyers to the poor has been undertaken not by the courts themselves and not by the bar acting in its organized capacity but by independent agencies which we call legal aid organizations. To this generalization there are minor exceptions and further it should be said that many individual judges and lawyers were pioneers in creating these agencies but the important fact remains that the legal aid organizations came into being independently of the administration of justice and have grown up as though they were distinct from and unrelated to our existing judicial institutions.

The first legal aid society was started in New York in 1876 and ten years later two similar agencies were founded in Chicago. For years the idea was not understood by either the bar or the public, it did not spread, and the existing organizations were maintained with much difficulty. When the nine-

teenth century drew to its close there were still only these three societies and their clients in 1899 numbered only 10,425. In the first decade of the new century, however, a steady expansion began, and by 1910 fourteen societies had been established in the East. During the next four years, 1910-1914, their number doubled to twenty-eight, the chief expansion being in the cities of the Middle West. Until the outbreak of the war the movement continued to spread, it extended to the Pacific Coast and into the Southwest, so that by 1917 forty-one organizations were in existence.

When one considers their recent origin the amount of work already accomplished by the legal aid organizations is remarkable. They have provided lawyers for one and one-half million persons; they have collected for their clients cash sums aggregating over four million dollars and for the conduct of this work they have expended nearly two million dollars. They are maintaining a corps of one hundred and seventy-five attorneys; and each year over 100,000 persons appeal to them for legal assistance.

This multitude of plain and humble people considers the legal aid organizations as the most essential part of the administration of justice. Although we know that their estimate is disproportionate we can clearly see that legal aid organizations came into being to fill a gap in our legal institutions and that to day they are performing an essential service which is an integral part of any comprehensive and complete system of providing equal justice to all; equal justice to our fellow citizens, who may be poor or ignorant, and to the strangers within our gates, so that the humblest among us may invoke the protection of the law through proper proceedings in the courts for any invasion of his rights, by whomsoever attempted.

The realization that there exists this close relationship between legal aid work and the administration of justice has come but slowly. For a long time we were misled by the fact that legal aid organizations were supported by private philanthropy into thinking of them as just one more form of charity; we failed to see through the form to the substance and to appreciate that there was involved the great distinction be-

tween giving such things as fuel and clothing which is charity and giving justice which is the supreme obligation of government. This attitude was perfectly natural; even the men most closely identified with the work did not grasp the full truth.

Then in 1910 Kansas City created a legal aid organization as a department of government, appropriated public funds for its support and established a precedent which has since been followed in eight other cities. Guided by these object lessons our thought has developed until now we are beginning to understand that legal aid work has a definite and close relationship to the administration of justice. Because of that relationship, legal aid work becomes a matter of direct concern to all members of the bar and especially to us as members of this great Association.

Our honored President speaking last April in Chicago of the purposes and activities of the Association among other things said:

> "The American Bar Association is not a club, nor a political party, but an organization made up of volunteer members of the bar (meeting to) exchange views as to how we can benefit, not ourselves, but our country, how we can solve these problems pressing upon us, how we can answer the cry of the poor and the downtrodden for justice, and how we can say 'we will sell, delay, or deny justice to no man as was said in Magna Charta.'"

I have faith that we can solve that problem; I believe we have it in our power to answer that cry. We understand the nature of the problem confronting us as fully as it is ever permitted us to understand any problem of human life. We know of two instrumentalities which attack the existing difficulty at its roots and which, if wisely developed, will go far towards remedying it completely. Basing our judgment not on theory but on the already accumulated fund of experience we can confidently be assured that by aiding in the extension of small claims courts and similar agencies throughout the country, by enabling the legal aid organizations to attain their maximum potential strength, and by guiding the whole legal aid movement towards its ultimate goal of incorporation into our system of administering justice we shall be rendering an

invaluable national service, for we shall be promoting the sane and orderly reform of our legal institutions in the direction which is at this time of the most critical importance.

Our opportunity is as splendid as the responsibility is great. There has been an awakening of the public conscience. The course of events is already beginning to shape itself. The Massachusetts Judicature Commission has recommended and the legislature has enacted a law giving the simplified machinery of the small claims court state-wide application for the adjudication of small causes. The Pennsylvania Constitutional Commission has adopted and will submit an amendment to the Constitution of Pennsylvania giving the Supreme Court power not merely to regulate practice and procedure but also to control costs, provide for the assignment of counsel, and to "regulate the activities of any public or private agency rendering legal aid."

Beginnings of this sort, encouraging as they are, can attain their full promise only through the sympathetic support and cooperation of the bar. Our leadership is needed.

We have every reason to face this task with optimism and high courage. If we will take command of the moral forces which are now stirring throughout the nation, we shall find public opinion ready to fight staunchly at our side. Let us assume that leadership by declaring here and now that henceforth within the field of law the mighty power of the organized American bar stands pledged to champion the rights of the poor, the weak, and the defenseless.